

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, January 13, 2010, at 6:30 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County, Wisconsin, 53188.

BOARD MEMBERS PRESENT: Ray Dwyer
Tom Day
Nancy Bonniwell
Linda Weber

BOARD MEMBERS ABSENT: Walter Schmidt
Robert Bartholomew

SECRETARY TO THE BOARD: Nancy M. Bonniwell

OTHERS PRESENT: Town of Merton Board of Adjustment
Peggy S. Tilley, Senior Land Use Specialist
Robert Miller, BA09:050, agent
Don Dysland, BA09:048, neighbor
Charles Stelter, BA09:048, representative of owner
Don Higgins, BA09:048, neighbor
Diane C. Higgins, BA09:048, neighbor
Lawrence Babb, BA09:050 and BA09:052, agent
Mike Herro, BA09:049, owner
Janet Gibeau, BA09:052, owner

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced; however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Dwyer *I make a motion table action on the approval of the Summary of the Meeting of December 9, 2009, until the next regularly scheduled Board of Adjustment Meeting, because there are only two Board members present who were present at the December 9, 2009, meeting.*

The motion was seconded by Ms. Bonniwell and carried unanimously.

NEW BUSINESS:

BA09:050 PATRICIA WALKER LIVING TRUST (Owner) ROB MILLER (Agent):

Mr. Dwyer *I make a motion to approve the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report with the following modifications to*

the recommended conditions and the recommended reasons:

Condition No. 2 shall be modified to read as follows: “The proposed sunroom addition shall not exceed 14’ in depth by 16’8” in width.”

Condition No. 3 shall be modified to read as follows: “The existing deck shall be reduced in size so that it is no deeper than 14 ft. This will require that the portion of the deck on the lakeside of the sunroom be removed. A stairway of no more than 4 ft. in width may be allowed on the lakeside of the remaining deck for access. The existing stairs on the west side of the sunroom may remain.”

The reasons for the Board’s decision shall read as follows: “The approval of this request will allow a new sunroom addition on the lakeside of the residence that will be substantially in compliance with the shore setback requirements with only a minimal increase in the overall floor area ratio. Furthermore, as conditioned, the approval of this request will require the removal of the very nonconforming shed/playhouse that is encroaching over the lot line and that is located partially within the floodplain. The approval of this request is within the purpose and intent of the Ordinance.”

The motion was seconded by Ms. Weber and carried unanimously.

The Planning and Zoning Division staff’s recommendation was for **approval** of the request for variances from the shore setback, floodplain setback, floor area ratio, and open space requirements of the Waukesha County Shoreland and Floodland Protection Ordinance to allow the construction of a new sunroom to replace the existing sunroom on the property, subject to the following conditions:

1. The shed/playhouse near the lake shall be removed prior to the issuance of a Zoning Permit for the sunroom addition.
2. The proposed sunroom addition shall not exceed 10 ft. by 12.5 ft. in size (125 sq. ft.) so as not to be any larger than the previously approved sunroom.
3. The proposed sunroom addition shall not extend any closer to the shore or floodplain than the existing sunroom.
4. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all existing structures and the staked-out location of the proposed sunroom addition, in conformance with the above condition, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
5. Prior to the issuance of a Zoning Permit, a revised set of building plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review

and approval.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The Board of Adjustment previously granted variances to allow a 10 ft. by 12.5 ft. sunroom addition to the lakeside of the residence. Therefore, it is presumed that the size of the previously allowed sunroom was reasonable. The approval of this request, as conditioned, will allow the replacement of the existing sunroom with a new sunroom, the same size as the existing sunroom and will not allow a structure to be constructed any closer to the shore and floodplain than the existing structure. Furthermore, as conditioned, the approval of this request will require the removal of the very non-conforming shed/playhouse that is encroaching over the lot line and that is located partially within the floodplain. Therefore, since this approval will only allow the replacement of the sunroom in kind, it will not have an adverse effect on the public interest and welfare and will be within the purpose and intent of the Ordinance.

BA09:051 MARTIN AND CAROL LEONARD TRUST (Owner) LAWRENCE BABB (Agent):

Mr. Day

*I make a motion to **approve** the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Ms. Bonniwell and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the floodplain setback, floor area ratio, and open space requirements of the Ordinance, as well as **approval** of the request for a special exception from the minimum floor area requirements of the Waukesha County Shoreland and Floodland Protection Ordinance to allow the construction of a new single-family residence with an attached garage, deck and patio on the property, subject to the following conditions:

1. The footprint of the proposed residence and attached garage including any covered decks, covered patios, and/or covered porches, shall not exceed 1,287 sq. ft. as proposed. There must be an attached garage of at least 400 sq. ft. in size.
2. The total floor area ratio on the property including the first and second floors (not including the basement level), attached garage, any covered decks, covered patios, and/or covered porches, and shall not exceed 22.01% (1,972 sq. ft.).
3. The proposed residence and attached garage must comply with the road setback, offset, and shore setback requirements of the Ordinance, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset and setback requirements. The residence shall be located a minimum of 34 ft.

from the floodplain, the deck shall be located a minimum of 24 ft. from the floodplain and the patio shall be located a minimum of 22 ft. from the floodplain as proposed. It should be noted that these setbacks relate to the current floodplain elevation of Lake Keesus of 970 ft. amsl. If the floodplain elevation is reduced back to approximately 960 ft. amsl, the setbacks specified in BA08:052 shall be complied with.

4. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out locations of the proposed residence, attached garage, deck and patio, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
5. The Building Plans submitted dated December 1, 2009, shall be complied with unless a new Building Plan is submitted to the Planning and Zoning Division staff for review and approval that also complies with the decision contained herein.
6. The Grading Plan stamped by the surveyor on November 11, 2009, shall be complied with. Unless a revised Grading Plan is submitted to the Planning and Zoning Division Drainage shall remain on the property or drain to the lake, and not to the neighboring properties or the road.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Due to the limitations of the lot it is reasonable to grant a variance from the minimum floor area requirement to allow a smaller first floor of the residence. The proposed residence will still comply with the total minimum floor area requirements of the Ordinance. Due to the size of the lot, no structure could be constructed on the property without the need for a variance from the open space requirements. The approval of this request, as conditioned, will allow the construction of a residence that will be reasonably sized for the lot and for the surrounding neighborhood. In addition, although a floodplain setback variance is required at this time, if the revised floodplain of Lake Keesus is adopted, the residence and deck will only be slightly non-conforming to floodplain setback and will be located in accordance with the Board's previous decision. Therefore, the approval of this request, as conditioned, will be within the purpose and intent of the Ordinance.

BA09:048 SANDRA CLAAS:

Mr. Day

*I make a motion to **deny** the after-the-fact variance requests on the basis that this request is substantially the same request that was previously heard and denied by the Board.*

The motion was seconded by Mr. Dwyer and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **denial** of the requested after-the-fact variances from the shore setback and floodplain setback and **denial** of the requested after-the-fact special exception from the accessory building floor area ratio for the relocation of the non-

conforming shed near the lake that was constructed without permits.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The Planning and Zoning Division staff recommends denial of this request because this is substantially the same request that was presented to and denied by the Board in 2008. Originally, the previous owner asked to keep the shed in its current location. When this request was denied, the previous owner then asked the Board for reconsideration indicating that he would move the shed so that it would be 5 ft. from the south lot line to comply with the offset requirement, and also that he would remove the shed near the road. The request for variances was considered by the Board and denied. It should be noted that there was some discussion by the Board during the reconsideration regarding moving the shed further back from the lake.

The only modification that the new owner has now presented to the Board is that the new owner is proposing to move the shed an additional 9 ft. from the shore. This will not bring the shed into compliance with the shore and floodplain setback requirements. Therefore, as noted above, staff feels that this is essentially the same request that was previously presented to and denied by the Board. Section VI of the Board of Adjustment Rules of Procedure provide that the Board may not rehear a previous decision, except the Board may reconsider a decision as provided by these rules or when required by a court order. It should be noted that the rules also provide that a request for reconsideration must be made within thirty days of the filing of the Board's decision.

If the Board determines that this is a new request, then the staff provides the following recommendation:

It has not been demonstrated, as required for a variance, that denial of the requested variances from the shore setback, and floodplain setback requirements of the Ordinance to retain a shed that was constructed without the necessary permits would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

The owner can use the property for the permitted residential use without the additional shed. The petitioner has a detached garage and a shed near the road that should provide necessary storage area. The lot is extremely flat; therefore, there are no physical limitations that warrant an additional storage area near the lake. In addition, based on the flat topography of the lot, it appears that the shed in its current or proposed location, has a negative impact on the neighboring properties. The granting of variances from the shore and floodplain setback requirements of the Ordinance would not be within the purpose and intent of the Ordinance.

The shed also requires a special exception from the accessory building floor area ratio

requirement of the Ordinance. A special exception differs from a variance in that a special exception does not necessarily require the demonstration of an unnecessary hardship. However, when granting special exceptions, the Board of Adjustment must still consider whether the proposed special exception would be hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects and the Board may impose such restrictions or conditions they deem necessary for the protection of adjacent properties and the public interest and welfare. Without the special exception, the property would be allowed 496 sq. ft. of accessory building area.

Allowing an illegally constructed shed to remain this close to the shore and floodplain does have a negative impact on the lake. The Ordinance was established for the purpose of promoting the public health, safety, convenience and welfare, to prevent and control water pollution, to protect spawning grounds, fish and aquatic life, to control building sites, and placement of structures and land uses through prohibiting uses detrimental to the shoreland area, regulating building and structural placement, regulating land and water uses so as to assure a more compatible relationship to the carrying capacity of the land and water. The Ordinance is also intended to preserve shore cover and natural beauty by preventing shoreline encroachment by structures. Approval of this request would directly conflict with the stated purpose and intent of the Ordinance. Therefore, the granting of a special exception from the accessory building floor area ratio requirement of the Ordinance would not be within the purpose or intent of the Ordinance. Furthermore, accessory structures such as sheds, decks, patios, etc., are amenities to a property, but are not necessary for reasonable residential use of any property. Case law has repeatedly held that petitioners are not entitled to the “highest and best use” of a property, but only reasonable use. Please note that a denial of the requested variances and special exception will mean that the shed must be removed from the property. Any hardship this may have on the property owner is self-created because the shed was constructed without the necessary permits.

BA09:049 BSMP, LLC. c/o MIKE HERRO, OCONOMOWOC REALTY:

Mr. Day

*I make a motion to **approve** the request, in accordance with the Staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report and for the following additional reasons:*

“There is a hardship because the location of the property is set so far back from C.T.H. “P” that in order to have viable businesses and get the customers in, a sign closer to the road is necessary. In addition, in order to have reasonable use of the commercial property and to attract business, a better identifying sign is needed.”

The motion was seconded by Ms. Bonniwell and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the sign size, number of signs, and road setback requirements of the Waukesha

County Zoning Code to allow the petitioners to replace the existing off-premise sign for Brown Street Market Place, with a new larger, off-premise sign, subject to the following conditions:

1. A request to amend the Site Plan/Plan of Operation for the Brown Street Market Place to include the proposed sign must be submitted to both the Town of Oconomowoc and the Waukesha County Department of Parks and Land Use. The amended Site Plans/Plans of Operation must be approved by both the Town of Oconomowoc Plan Commission and the Waukesha County Department of Parks and Land Use, prior to the issuance of a Zoning Permit for the proposed Brown Street Market Place sign.
2. The proposed free-standing sign for the Brown Street Market Place must be located at least 20 ft. from the edge of the 66 ft. wide road right-of-way of the public road leading into the Brown Street Market Place property from C.T.H. “P”. Both proposed free-standing signs must be located a minimum of 12.5 ft. from the edge of the 100 ft. wide platted road right-of-way of C.T.H. “P”. This will place them 7.5 ft. from the edge of the 110 ft. wide established road right-of-way (base setback line) of C.T.H. “P” and 62.5 ft. from the centerline of the road right-of-way, in line with the First Bank sign on the adjacent property to the south.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will allow a free-standing sign that adequately identifies the Brown Street Market Place to be installed in a visible location outside of the road right-of-way, in keeping with other signs in the area. The proposed sign will not be a safety hazard and will not be contrary to the public interest. The new sign will allow motorists to identify the tenants in the commercial building more easily. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA09:052 JANET GIBEAU (OWNER) LAWRENCE BABB (AGENT):

Mr. Day

*I make a motion to **approve** the request, with the following modifications to the recommended conditions and reasons stated in the Staff Report:*

Condition No. 1 shall be removed.

The language “if applicable” shall be added to Condition No. 2.

Condition No. 3 shall be modified to read as follows: “Prior to the issuance of a Zoning Permit for the modified wooden stoop/deck, an as-built survey of the property with the existing stoop/deck drawn on it shall be submitted to the Planning and Zoning Division Staff for review and approval.”

The reason for the decision shall be modified to read as follows:

“The approval of this request will allow the petitioners to a reasonably sized wooden stoop/deck for access to the front door of the residence. The approval of this request is within the purpose and intent of the Ordinance.”

The motion was seconded by Ms. Bonniwell and carried unanimously.

The Planning and Zoning Division staff’s recommendation was for **approval** of the request for a variance from the floodplain setback requirements as well as **approval** of the request for a variance from the C-1, Existing Floodplain Development Overlay District requirements to allow the owner to retain the wooden stoop/deck that was constructed without the necessary permits, subject to the following conditions:

1. The wooden stoop/deck shall be reduced in size so that it does not extend closer to the lot side lot line than the residence and so that it does not extend closer to the road than the enclosed porch.
2. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
3. Prior to the issuance of a Zoning Permit for the modified wooden stoop/deck, an updated Plat of Survey showing all existing structures and the location of the new deck, in conformance with the above condition, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request will allow the petitioners to a reasonably sized wooden stoop/deck for access to the front door of the residence. The staff would have recommended in favor of a stoop/deck of this nature had it been proposed at the time of the new home. The existing stoop/deck, extends closer to the road, side lot lines, and floodplain than the existing residence and is excessive for access to the residence. Since the residence is located in the floodplain, only the minimum amount of relief necessary to allow the property to be used for a permitted purpose should be granted. It should be noted that the residence currently has deck on the lakeside and an enclosed porch on the roadside. The approval of this request to allow a small wooden stoop for access to the residence will be within the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA09:046 JOHN AND CHRISTINE LESKO TRUST:

Ms. Bonniwell

*I make a motion to **reconsider** the decision made December 15, 2009,*

regarding this matter at the next regularly scheduled Board of Adjustment meeting.

The motion was seconded by Mr. Dwyer and carried unanimously.

The Planning and Zoning Division staff recommended that the Board of Adjustment **reconsider their Decision dated December 15, 2009, regarding a portion of Condition No. 1.**

The reasons for the recommendation, as stated in the Staff Memorandum, are as follows:

The reason for the staff's recommendation is that it is the staff's understanding that the intent of that condition was to ensure that no additional square footage was added to any portion of the second floor. The portion of the second floor where the new roofline is now proposed will add no height or additional square footage that isn't already being calculated to the structure. Furthermore, the petitioner's statement that the impact of the change to the first floor roofline without the originally proposed changes to the second story could not be completely known and understood at the time of the original hearing is correct. Therefore, a reconsideration of the intent and wording of this condition seems warranted. This matter should be placed on the February 10, 2010 agenda and heard upon proper fee being provided by the owner and legal notice given of the reconsideration.

ADJOURNMENT:

Mr. Day *I make a motion to adjourn this meeting at 9:40 p.m.*

The motion was seconded by Ms. Weber and carried unanimously.

Respectfully submitted,

Nancy M. Bonniwell
Secretary, Board of Adjustment